

# EXHIBIT 3

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF TEXAS  
3 WACO DIVISION  
4 NEONODE SMARTPHONE, LLC ) Docket No. WA 20-CA-505 ADA  
5 )  
6 vs. ) Waco, Texas  
7 )  
8 APPLE, INC. ) October 23, 2020

6 -----  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF TEXAS  
9 WACO DIVISION  
10 NEONODE SMARTPHONE, LLC ) Docket No. WA 20-CA-507 ADA  
11 )  
12 vs. ) Waco, Texas  
13 )  
14 SAMSUNG ELECTRONICS CO., )  
15 LTD., SAMSUNG ELECTRONICS )  
16 AMERICA, INC. ) October 23, 2020

12  
13 TRANSCRIPT OF TELEPHONIC CONFERENCE  
14 BEFORE THE HONORABLE ALAN D. ALBRIGHT

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25   Proceedings reported by computerized stenography,  
transcript produced by computer-aided transcription.

13:29:54 1 THE COURT: Good afternoon. It's Alan Albright.

13:30:00 2 Ms. Miles, would you call the case, please.

13:30:02 3 THE CLERK: Sure.

13:30:03 4 Telephonic scheduling conference in Civil Action

13:30:05 5 6:20-CV-505, styled, Neonode Smartphone, LLC vs. Apple,

13:30:10 6 Incorporated; and Case No. 6:20-CV-507, styled, Neonode

13:30:17 7 Smartphone, LLC vs. Samsung Electronics Company, Limited

13:30:20 8 and Samsung Electronics America, Incorporated.

13:30:25 9 THE COURT: Welcome, everyone.

13:30:26 10 If I could hear announcements from counsel,

13:30:27 11 please, starting with the plaintiff.

13:30:31 12 MR. CHERRY: Your Honor, this is Craig Cherry

13:30:33 13 with Haley & Olson on behalf of plaintiff, and Philip

13:30:35 14 Graves of the Hagens Berman law firm. And Mr. Graves will

13:30:39 15 be speaking on behalf on all points this afternoon, your

13:30:43 16 Honor.

13:30:43 17 THE COURT: Welcome. Thank you.

13:30:49 18 MR. GRAVES: Good afternoon, your Honor.

13:30:50 19 This is Philip Graves on behalf of plaintiffs.

13:30:53 20 THE COURT: And for defendant?

13:30:58 21 MS. CHEN: Good afternoon, your Honor --

13:30:59 22 MR. GUARAGNA: John Guaragna --

13:31:02 23 MS. CHEN: Hi, John.

13:31:03 24 This is Betty Chen of Fish & Richardson on behalf

13:31:07 25 of Apple.

13:31:08 1 THE COURT: Okay. And are there any issues we  
13:31:10 2 need to take up?

13:31:13 3 MR. GUARAGNA: Your Honor, John Guaragna, just in  
13:31:15 4 case I was cut off there, for Samsung Defendants.

13:31:18 5 THE COURT: Okay.

13:31:23 6 MR. GUARAGNA: At least from the defendants, your  
13:31:25 7 Honor, we do have a couple of issues we'd like to take up  
13:31:27 8 with respect to some pre-Markman items.

13:31:30 9 THE COURT: Okay.

13:31:33 10 MR. GUARAGNA: And speaking for Samsung, your  
13:31:35 11 Honor, there are a couple of areas of third-party  
13:31:40 12 discovery that we'd like leave to commence prior to the  
13:31:44 13 Markman hearing. And I'm going to address one of those  
13:31:47 14 issues, and I think Ms. Chen's going to address another  
13:31:49 15 one.

13:31:50 16 With respect to the first issue, your Honor, we  
13:31:53 17 believe that there are material prior art references  
13:32:00 18 located with Sony, and we would like leave to commence  
13:32:04 19 that third-party discovery of Sony to identify and  
13:32:10 20 hopefully obtain the evidence with respect to those  
13:32:14 21 third-party products that we think are going to be  
13:32:18 22 important pieces of prior art in this case. We'd like to  
13:32:20 23 commence that discovery as soon as possible.

13:32:24 24 We're hopeful but, unfortunately, we think there  
13:32:26 25 may be a need to seek some of the discovery from Sony

13:32:31 1 overseas. And as your Honor obviously has experience,  
13:32:36 2 that can take some time and will take likely even longer  
13:32:39 3 during the pandemic. So with your Honor's permission,  
13:32:43 4 we'd like to commence that discovery of Sony. Hopefully  
13:32:45 5 we won't need to go through the Hague and go overseas, but  
13:32:47 6 it looks like that is probably the case; but we'll avoid  
13:32:51 7 it if we can.

13:32:53 8 But, in essence, we'd just like to get those  
13:32:56 9 documents, no deposition. Just simply documents and get  
13:32:59 10 that perhaps started now so we'll have it because it will  
13:33:01 11 matter in the litigation.

13:33:03 12 THE COURT: Yeah. Let me tell you what I'm  
13:33:05 13 trying -- and, Mr. Guaragna, as part of my committee, this  
13:33:09 14 is an issue I think we're going to try and address on a  
13:33:12 15 more permanent basis because it's coming up a good bit,  
13:33:15 16 especially worse with the COVID situation and the  
13:33:20 17 inability to travel.

13:33:22 18 So I am absolutely fine with you commencing  
13:33:26 19 anything that is going to make the case go more smoothly.  
13:33:32 20 If you are subpoenaing things for -- I'm not sure exactly  
13:33:37 21 what format you're using to try and obtain what it is  
13:33:41 22 you're trying to obtain from Sony, the only thing I would  
13:33:44 23 suggest that you do is, make sure that the plaintiffs are  
13:33:52 24 given a chance to -- if there's something they also need  
13:33:55 25 from Sony or anyone else you're going to be sending a

13:33:59 1 request to, that they be able to cross-subpoena -- or if  
13:34:03 2 they choose to. They can do whatever they want. But  
13:34:07 3 we've got a couple of cases recently where one side was  
13:34:10 4 concerned because the other side had subpoenaed some  
13:34:14 5 things, but not everything.

13:34:15 6           So I'm actually fine for you to do that. Also,  
13:34:19 7 just at a more macro level that may or may not apply to  
13:34:24 8 what y'all are doing here, I think what I'm going to start  
13:34:27 9 doing is -- and encouraging, actually. And, of course,  
13:34:31 10 with lawyers of y'all's caliber, I probably don't need to  
13:34:35 11 encourage, that you're probably going to do it without  
13:34:37 12 that.

13:34:37 13           But, you know, anything that you can do in terms  
13:34:41 14 of either documents, possible art, or inventors for sure  
13:34:48 15 that are foreign, I'm going to allow those efforts to take  
13:34:53 16 place immediately in terms of trying to get them arranged.  
13:35:00 17 But I don't think I'm going to allow the discovery, for  
13:35:04 18 example, the deposition to take place until, you know,  
13:35:09 19 after the Markman.

13:35:10 20           But anything that a party wants to do to  
13:35:16 21 accelerate the process of getting discovery done once the  
13:35:19 22 Markman has taken place, I'm probably going to be okay  
13:35:22 23 with.

13:35:25 24           MR. GUARAGNA: Thank you, your Honor.

13:35:27 25           I think to your point about collaboratively

1 approaching this, I think the parties have already agreed  
2 to coordinate discovery in this case generally. And so,  
3 we would certainly welcome an opportunity to make it as  
4 easy as possible on Sony. And to the extent the plaintiff  
5 has any issues it intends to seek doing that in  
6 conjunction or doing that collaboratively, I think, is  
7 certainly fine with us and makes a lot of sense. So we  
8 appreciate that, your Honor.

9 We will -- we do intend to issue subpoenas.  
10 Hopefully we can issue them just to the U.S. entity and  
11 obtain any information we need. If we don't, we will move  
12 forward with the overseas efforts. And we will hold off  
13 on any depositions until after the Markman hearing, as  
14 your Honor has indicated.

15 THE COURT: Now, of course, if -- and that -- and  
16 by the way, that is sort of a generic concern. If you  
17 were to find out, for some reason, that you needed to take  
18 some -- actually take some kind of discovery because it  
19 might not still exist, you know, if there's a person that  
20 might no longer be with Sony, for example, or I guess  
21 worse situation. But if there's any need to take  
22 discovery because there's no -- it may not be available  
23 after the Markman, just, you know, try and work that out  
24 yourselves. But if you can't, certainly bring it to my  
25 attention, and on a micro level, I'm happy to deal with



13:36:54 1 any issues you all have of whether or not to allow  
13:36:57 2 discovery. But I will probably always err on the side of  
13:37:01 3 making sure that the discovery is able to be taken.

13:37:04 4 But for the generic discovery that, Mr. Guaragna,  
13:37:08 5 you're talking about, hopefully my plan works. If you  
13:37:12 6 find, by the way, that there is some problem that's kind  
13:37:17 7 of baked in that I'm just missing, please let me know  
13:37:22 8 because, as I think everyone on the call knows, my goal is  
13:37:26 9 to make this as user or lawyer-friendly as possible, and  
13:37:32 10 if something I'm not allowing you to do or allowing you to  
13:37:37 11 do, or we need to do it some other way that's more  
13:37:39 12 efficient for you all, that is my ultimate goal.

13:37:43 13 So that was Mr. Guaragna. Does Ms. Chen need to  
13:37:51 14 take up anything for her client?

13:37:53 15 MS. CHEN: Yes. Thank you, your Honor.

13:37:54 16 So I think here, we have the exact situation that  
13:37:59 17 you're talking about where it is a unique situation, and  
13:38:03 18 we would ask to take discovery and depositions before  
13:38:07 19 Markman for certain foreign entities and the foreign  
13:38:13 20 inventor.

13:38:13 21 And so, if I can give you some of the facts so  
13:38:15 22 you understand the situation here, we have an entity  
13:38:20 23 called Neonode, Inc., and that entity was original  
13:38:25 24 assignee of the patents when they were issued. Neonode,  
13:38:29 25 Inc. is located in Sweden, and it still has profit-sharing

13:38:33 1 rights with monetization of these patents. So Neonode has  
13:38:37 2 at least six foreign subsidiaries and various joint  
13:38:42 3 ventures. They range from places in Japan and South  
13:38:45 4 Korea, Taiwan and Sweden.

13:38:47 5 And from looking at the public documents so, for  
13:38:50 6 example, Neonode, Inc.'s 10-K, it looks like some of these  
13:38:54 7 entities have rights to develop and license touchscreen  
13:38:58 8 technologies. But to be honest, it's just a hodgepodge of  
13:39:01 9 foreign entities, and we can't figure out who does what  
13:39:04 10 from just looking at the public documents.

13:39:05 11 And so, what we had is this multiple layer of  
13:39:11 12 entity -- foreign entity discovery. We have to first  
13:39:14 13 conduct the discovery to figure out which entities are --  
13:39:18 14 have which rights. And then, we have the second layer of  
13:39:21 15 foreign discovery to obtain licensing assignment and  
13:39:29 16 conception, valuation documents. And so, if we were to  
13:39:31 17 start in April on the depositions, I just don't think we  
13:39:36 18 have enough time within a seven-month period of discovery.

13:39:40 19 So for the entities, we would ask to take the  
13:39:43 20 depositions and collect documents in advance. So  
13:39:49 21 separately, we also have --

13:39:51 22 THE COURT: Let me --

13:39:53 23 MS. CHEN: -- the coinventor -- okay.

13:39:54 24 THE COURT: Let me hear if there's any objection  
13:39:56 25 to that from the plaintiff.

13:40:02 1 MR. GRAVES: Yes. Thank you, your Honor.

13:40:03 2 This is Phil Graves.

13:40:05 3 We do object for several reasons. First, it's  
13:40:09 4 not accurate to suggest that Neonode, Inc. is a foreign  
13:40:15 5 entity. It's actually a Delaware corporation with a place  
13:40:19 6 of business in San Jose, California. Second, you know,  
13:40:25 7 the ownership -- it's a little unclear what bearing any  
13:40:30 8 information concerning ownership or licensing would have  
13:40:33 9 on any issues that need to be addressed prior to the  
13:40:37 10 Markman.

13:40:38 11 We're fine with Apple commencing the process of  
13:40:43 12 obtaining foreign discovery against, you know, whatever  
13:40:45 13 foreign Neonode-affiliated entities they think may have  
13:40:51 14 discoverable information. But we just don't think it's  
13:40:54 15 efficient to conduct depositions and undertake, you know,  
13:40:59 16 significant intensive discovery on these issues prior to  
13:41:04 17 the Markman.

13:41:05 18 So we do object to this request, but, you know,  
13:41:08 19 we're fine commencing the process as Samsung has  
13:41:14 20 requested, right, but we just don't think it's efficient.  
13:41:17 21 And we don't think it's going to yield anything useful for  
13:41:21 22 Apple to be, you know, running all over the world, taking  
13:41:23 23 depositions of a bunch of entities that really are  
13:41:26 24 unlikely to have any material information or evidence in  
13:41:31 25 any event.

13:41:31 1 THE COURT: Well, let me ask this. It sounds to  
13:41:37 2 me like maybe the place to jump off on this is to allow  
13:41:45 3 Apple to take a 30(b)(6) deposition of the United States  
13:41:52 4 entity and we can -- and that person should be prepared to  
13:41:57 5 tell us whether or not the information that they're  
13:42:03 6 seeking with regard to licensing, and the other  
13:42:05 7 assignments, and the other issues is available from  
13:42:09 8 someone in the United States or whether or not everyone  
13:42:13 9 will have to go to a foreign country to do that.

13:42:19 10 And then, it seems to me, we can make a more  
13:42:23 11 informed decision at that point, the extent of dis --  
13:42:26 12 whether or not we actually need to do discovery right now  
13:42:29 13 or whether or not we just need to allow -- I need to allow  
13:42:33 14 the defendant to lay the predicate, as it were, to get the  
13:42:39 15 discovery done once the Markman takes place.

13:42:41 16 So, Ms. Chen, is there a downside to that I'm  
13:42:47 17 missing?

13:42:48 18 MS. CHEN: I don't see a downside. That works  
13:42:50 19 for us.

13:43:00 20 THE COURT: What is the relationship -- and I'm  
13:43:02 21 not asking a legal relationship. Just if I were to allow  
13:43:05 22 the deposition of that entity to take place, does the  
13:43:07 23 plaintiff's counsel have the ability to coordinate that  
13:43:12 24 kind of deposition or does -- or are they a pure third  
13:43:17 25 party that -- what's the situation there?

13:43:19 1 MR. GRAVES: Yes, your Honor.

13:43:22 2 Neonode, Inc. is a third party. We are not  
13:43:25 3 representing -- we are not counsel for Neonode, Inc.

13:43:29 4 THE COURT: Okay. Well, in that case, I'll allow  
13:43:33 5 -- I will allow that discovery to take place. I assume  
13:43:40 6 that they will cooperate with what I'm asking to be done;  
13:43:45 7 if not and if Apple needs to come back to the Court for  
13:43:49 8 some kind of order, I'm happy to do that, as well. Just  
13:43:51 9 let me know.

13:43:52 10 So does that resolve that issue as far as  
13:43:55 11 everyone's concerned?

13:43:58 12 MS. CHEN: From Apple's side, yes, your Honor.

13:44:03 13 MR. GRAVES: Yes, your Honor.

13:44:03 14 THE COURT: Okay. And, Ms. Chen, I interrupted  
13:44:05 15 you earlier. What is the next issue?

13:44:09 16 MS. CHEN: Sure.

13:44:10 17 So it's similar in that the sole inventor of the  
13:44:14 18 patent, someone named Magnus Goertz, is located in Sweden.

13:44:20 19 THE COURT: Okay.

13:44:21 20 MS. CHEN: And Neonode in this case has claimed a  
13:44:25 21 priority date of May 25th, 2000. The first patent in the  
13:44:29 22 case was filed on December 10th, 2002. And as far as  
13:44:34 23 we've seen so far, Neonode hasn't produced any conception  
13:44:38 24 or reduction to practice documents dating back to the May  
13:44:42 25 25th, 2000 date. We've asked Neonode to confirm that it's

13:44:47 1 produced all conception, reduction to practice documents,  
13:44:50 2 and it says it has, but Mr. Goertz might have more.

13:44:55 3           So here, you know, again, we feel like we're put  
13:44:59 4 in a distinct disadvantage by not being able to conduct  
13:45:04 5 discovery of Mr. Goertz before the Markman, and we'd ask  
13:45:08 6 to be able to take a deposition of him and be able to  
13:45:12 7 collect documents because we need to prepare invalidity  
13:45:16 8 contentions and understand this purported priority date  
13:45:20 9 that goes back to 2000.

13:45:22 10           THE COURT: Well, I'm not sure if the plaintiffs  
13:45:26 11 have given you that date and they've acted in good faith,  
13:45:29 12 in other words, if you have a lawyer on their side who is  
13:45:33 13 -- who has represented to you what that date is, it seems  
13:45:38 14 to me that you do your invalidity contentions based on  
13:45:40 15 that, and if it turns out that in -- there wasn't a  
13:45:44 16 good-faith basis for that to be made, then you can raise  
13:45:47 17 that with me again.

13:45:48 18           Here's the only reason I say that is basically,  
13:45:54 19 you know, I think you should get -- you're going to get  
13:45:57 20 one opportunity to speak through deposition to the  
13:46:02 21 inventor. And so, you know, if you -- if I were to allow  
13:46:06 22 you to take the deposition of the inventor now, that would  
13:46:10 23 be your -- you know, your one opportunity. And that may  
13:46:13 24 be fine with you, and if it is -- and it sounds to me like  
13:46:19 25 you'll probably be doing it by Zoom, then I'm open to

13:46:22 1 hearing that, as well.

13:46:24 2 But with the understanding that this would be the  
13:46:30 3 only deposition that would be allowed of the inventor,  
13:46:32 4 what would -- what would your preference be?

13:46:37 5 MS. CHEN: Well, with that understanding, that  
13:46:38 6 what I would ask for is for the May 25th, 2000 date to be  
13:46:48 7 -- to be stricken, quite honestly, because we don't have  
13:46:50 8 any of the documents, any documents at all from the  
13:46:52 9 plaintiff to support that date.

13:46:55 10 And they've said that they've provided us with  
13:46:57 11 all documents, but I believe the document that goes back  
13:47:00 12 the farthest is May 2001. And so, without any documents  
13:47:05 13 that support that early date, then it's really hard for us  
13:47:10 14 to be able to prepare our case and our defense with a date  
13:47:13 15 that has no support.

13:47:16 16 THE COURT: Well, how about -- how about this.  
13:47:21 17 My recollection was that -- my recollection is that it was  
13:47:28 18 a legitimate 30(b)(6) topic to -- a legitimate 30(b)(6)  
13:47:37 19 topic for someone to ask for that they -- the plaintiff  
13:47:41 20 produce someone who would testify and bind the company  
13:47:44 21 with respect to the date of conception. What if I allowed  
13:47:48 22 you to have a deposition of a 30(b)(6) witness -- I can't  
13:47:53 23 imagine it would take longer than an hour -- of the  
13:47:56 24 plaintiff who you would then have a 30(b)(6)  
13:48:00 25 representative who would be telling you what they believe

13:48:03 1 the date of conception to be, and we would go from there.

13:48:07 2 MS. CHEN: That works for us. Thank you, your  
13:48:09 3 Honor.

13:48:09 4 MR. GRAVES: Your Honor, might I respond?

13:48:12 5 THE COURT: Yes, sir.

13:48:13 6 MR. GRAVES: So the -- so, first of all, the date  
13:48:18 7 that we've provided in our disclosure of preliminary  
13:48:22 8 infringement contentions and priority date does have a  
13:48:25 9 good-faith basis. We have informed defense counsel that  
13:48:31 10 the plaintiff here, Neonode Smartphone, has produced all  
13:48:36 11 materials in its possession, custody or control that  
13:48:40 12 evidence conception or reduction to practice. That has  
13:48:45 13 been done.

13:48:45 14 But Neonode Smartphone does not control the  
13:48:52 15 inventor, Mr. Goertz. So we've also informed defense  
13:48:56 16 counsel, Mr. Goertz may have additional materials that  
13:49:03 17 bear on conception or reduction to practice and obviously  
13:49:06 18 has information along those lines. But again, since  
13:49:11 19 Neonode Smartphone does not control Mr. Goertz and can't  
13:49:16 20 necessarily obtain information from him, complete or  
13:49:22 21 otherwise, that would enable it to respond to an inquiry  
13:49:25 22 at a 30(b)(6) deposition, you know, it doesn't appear to  
13:49:30 23 me that that would be, you know, the most effective way to  
13:49:35 24 get at these issues. I mean, we're --

13:49:39 25 THE COURT: Well, don't you have -- you just said



13:49:43 1 you had provided to defendants a good-faith basis. And my  
13:49:48 2 sense of what you would be saying, if I were in your  
13:49:51 3 shoes, is that we've given them the best date we have, but  
13:49:56 4 it could very well be that they get -- that when the  
13:50:01 5 inventor talks, it could be an even earlier date because  
13:50:04 6 he might be able to say -- to have additional information.

13:50:07 7 Is that what you're saying?

13:50:09 8 MR. GRAVES: That's certainly one aspect of what  
13:50:13 9 I'm saying. Yes, your Honor.

13:50:15 10 THE COURT: Well, in that case, you know, it  
13:50:21 11 seems to me that we probably ought to allow the defendant  
13:50:25 12 to take a deposition, if they could get one arranged, with  
13:50:28 13 the inventor to find out what he's going to say about the  
13:50:33 14 invention date. Because if the only thing the plaintiff  
13:50:36 15 is able to do is give a good-faith effort and I'm forcing  
13:50:42 16 the defendants to give invalidity contentions, it seems to  
13:50:48 17 me that they ought to have the benefit of that information  
13:50:49 18 from the inventor.

13:50:51 19 And by the way, I understand what you're saying  
13:50:53 20 about the 30(b)(6) and I wouldn't want someone -- I  
13:50:57 21 wouldn't want to force you to have a 30(b)(6) from a  
13:50:59 22 witness who, you know, really would feel uncomfortable  
13:51:03 23 because he doesn't have any better information than what  
13:51:06 24 y'all have.

13:51:06 25 So what is your proposal for a solution to this

13:51:10 1 before I tell you what mine is?

13:51:16 2 MR. GRAVES: Well, your Honor, so -- you know,  
13:51:19 3 it's plaintiff's perspective that, you know, that  
13:51:25 4 testimony regarding the conception and reduction to  
13:51:27 5 practice doesn't really bear on the issues to be addressed  
13:51:30 6 at claim construction. The claim construction should just  
13:51:33 7 go forward, construing the claims based on the intrinsic  
13:51:37 8 and whatever extrinsic evidence bears on those issues.

13:51:42 9 But with respect to, you know, the issue of a  
13:51:45 10 30(b)(6) versus a declaration or a deposition, rather, of  
13:51:48 11 Mr. Goertz, you know, it would be our position that a  
13:51:51 12 30(b)(6) would be fundamentally unfair to the plaintiffs  
13:51:57 13 due to constraints on the plaintiff's ability to obtain  
13:52:01 14 complete information regarding the evidence --

13:52:04 15 THE COURT: Well, let me interrupt you because  
13:52:06 16 maybe I wasn't clear.

13:52:07 17 I'm not going to make -- I get that. I'm not  
13:52:10 18 going to make you do a 30(b)(6). So I'm trying to figure  
13:52:12 19 out -- I'm trying to figure out what an alternate method  
13:52:15 20 is because I do think that -- I do think that the  
13:52:23 21 defendants ought to have a reliable date. And if you've  
13:52:29 22 given them a date, but you can't provide them in good  
13:52:34 23 faith -- I'm going to assume it is. But if you can't  
13:52:36 24 provide to them any information -- unless you have and you  
13:52:42 25 could tell me if you have -- that backs that date up, then

13:52:46 1 it seems to me that the person -- only person that really  
13:52:50 2 has that information is the inventor, and we might need to  
13:52:53 3 have him -- if he will make himself available, we might  
13:52:57 4 need to have him deposed.

13:53:00 5 MR. GRAVES: And, your Honor, we or plaintiff  
13:53:02 6 would not oppose, you know, efforts to obtain a deposition  
13:53:08 7 of Mr. Goertz, of course, as long as, you know, all  
13:53:12 8 parties are provided an opportunity to ask some questions  
13:53:19 9 at that deposition.

13:53:20 10 THE COURT: Well, I think that's -- you know,  
13:53:23 11 maybe I've been off the bench too long, but that's my  
13:53:26 12 recollection of how these things work. So -- unless they  
13:53:31 13 changed the rules and I missed it. So yes. If we're  
13:53:35 14 going to go the deposition route, yes, everyone would get  
13:53:40 15 to ask questions.

13:53:44 16 So it sounds to me like we have a suggestion from  
13:53:48 17 the defendant and no opposition from the plaintiff. And  
13:53:52 18 so, that being said, I'm not sure exactly, Ms. Chen, how  
13:53:56 19 you go about arranging this deposition of the inventor,  
13:54:01 20 but I will tell you that, as far as I'm concerned, you are  
13:54:04 21 free to do so.

13:54:06 22 MS. CHEN: Thank you, your Honor.

13:54:07 23 One clarification. So with that, are we still  
13:54:12 24 limited to just the one deposition of the inventor?

13:54:16 25 THE COURT: You know, number one, I'm not sure

13:54:18 1 that you'll be able to persuade this guy to give you one,  
13:54:21 2 to begin with. And so, what I would suggest you do is  
13:54:29 3 make this a full deposition of him, since he's -- unless  
13:54:34 4 -- let me start over.

13:54:35 5 If you could get in agreement that you think you  
13:54:39 6 could trust and rely on that he would make himself  
13:54:43 7 available again -- I'm assuming this will be by Zoom. If  
13:54:46 8 you can get an agreement from him that you're sanguine  
13:54:50 9 with that he would appear again, then I would limit the  
13:54:54 10 deposition to just the issues of -- you're worried about  
13:55:00 11 with the date of conception.

13:55:03 12 If you have a legitimate concern that he might  
13:55:08 13 not voluntarily appear again, then you are free to ask him  
13:55:12 14 whatever questions you can ask, and then, we'll just deal  
13:55:15 15 -- I will not say right now that I'm going to prohibit you  
13:55:18 16 from taking the deposition. All I'm saying is, you know,  
13:55:24 17 you may or may not -- you know, he may or may not agree to  
13:55:26 18 do it. But I would allow in this situation another  
13:55:28 19 deposition.

13:55:29 20 MS. CHEN: Thank you, your Honor.

13:55:33 21 THE COURT: Any other issues we need to take up?

13:55:37 22 MS. CHEN: Yes, your Honor. Sorry. If I could  
13:55:38 23 indulge you with one more issue.

13:55:41 24 So --

13:55:43 25 THE COURT: Okay.

13:55:44 1 MS. CHEN: -- the issue is this. So these  
13:55:46 2 patents in the suit are user interface patents. So, for  
13:55:50 3 example, one of the patents, the 879 patent, Neonode has  
13:55:58 4 accused glide or swipe typing, and the Apple iPhone, the  
13:56:01 5 feature's called QuickPath. And what happens is when you  
13:56:04 6 open up the keyboard, you can create words by moving your  
13:56:07 7 finger across the keyboard without ever lifting your  
13:56:11 8 finger up.

13:56:12 9 So that's a feature that Apple developed and  
13:56:14 10 created. It's native to the phones when you buy them.  
13:56:18 11 Neonode has accused and allegedly charted this. But what  
13:56:22 12 Neonode has also done is it's accused ten apps that are  
13:56:28 13 entirely created by third parties, and it hasn't charted a  
13:56:32 14 single one of them.

13:56:33 15 So all it's done is, it's included one screen  
13:56:35 16 shot for one app keyboard, and that's for one single  
13:56:40 17 limitation; and then, it just concludes that the program  
13:56:44 18 code for all third parties' swipe-typing apps cause the  
13:56:48 19 accused devices -- and I'm reading here -- to function in  
13:56:50 20 the same manner. And that's really just not enough for us  
13:56:54 21 to understand what they're accusing here.

13:56:58 22 Before this call, I downloaded one of the  
13:57:03 23 third-party apps that's called FancyKey, and it gives me  
13:57:05 24 all these cute-colored keyboards with emojis, but they're  
13:57:09 25 twelve keyboards and I can't tell how Neonode would accuse

13:57:13 1 this at all without any charts.

13:57:15 2           So in our meet-and-confer and in the papers that  
13:57:17 3 we filed this morning, Neonode's saying that even if it  
13:57:21 4 supplements, the charts would all be the exact same for  
13:57:25 5 all the various apps. But all the various apps have  
13:57:27 6 different keyboards, different user interfaces. And so,  
13:57:30 7 if Neonode is saying that even if it supplements, it would  
13:57:36 8 still be the same, then we would argue that the  
13:57:39 9 supplementation would be futile, and we'd ask to strike  
13:57:42 10 the contentions accusing the third-party apps.

13:57:46 11           THE COURT: Well, let me say -- let me address  
13:57:49 12 that. It's rare -- it's rare that I ever, in advance, say  
13:57:58 13 that I'm going to strike something that hasn't been seen  
13:58:02 14 yet. So if the plaintiff has offered to provide you with  
13:58:07 15 those infringement contentions and as officers of the  
13:58:12 16 court, they are going to rely on them, they can send you  
13:58:17 17 those infringement contentions.

13:58:19 18           If we get further down the road in the litigation  
13:58:24 19 and, for some reason, you have -- you have -- if you  
13:58:26 20 develop some reason to believe those infringement  
13:58:29 21 contentions were not done in good faith, then we'll take  
13:58:34 22 it up at that point.

13:58:37 23           The point here being this is one where I do agree  
13:58:40 24 with the plaintiff, which is, these are, number one,  
13:58:43 25 preliminary claim constructions and, number two, they

13:58:47 1 don't have anything really to do with the Markman process.  
13:58:53 2 I mean, whether or not something infringes, I know the  
13:58:58 3 lawyers like to have it so that they can cobble together  
13:59:02 4 issues to be taken up at the Markman so they can come up  
13:59:08 5 with possible claim constructions that might or might not  
13:59:11 6 get them out of infringement. That's all fine, but that's  
13:59:15 7 really not the reason we do Markmans.

13:59:18 8 But if the plaintiff has volunteered to give you  
13:59:22 9 infringement contentions for the accused apps, I'm going  
13:59:28 10 to let them, and then, we'll see what happens, whether or  
13:59:33 11 not they're done in good faith or not. At this time, I'm  
13:59:35 12 certainly going to assume that they will be.

13:59:37 13 Is there anything else?

13:59:42 14 MR. GUARAGNA: Not from Samsung, your Honor.

13:59:45 15 MS. CHEN: Not from Apple --

13:59:48 16 MR. GRAVES: Not from --

13:59:48 17 THE COURT: I just had a --

13:59:51 18 MR. GRAVES: Not from the plaintiff.

13:59:51 19 THE COURT: I heard someone give a very loud  
13:59:54 20 sigh, so that must mean we're close to being done.

13:59:59 21 So it sounds like we're done. For purposes of  
14:00:04 22 the people who I'm currently talking to, I hope you have a  
14:00:07 23 wonderful weekend. Be safe out there. I'm going to stay  
14:00:10 24 on this call because I think we have another call at 2:00.  
14:00:13 25 But everyone who has been involved in this current hearing

14:00:17 1 is welcome to drop off. And I hope I get to see at least  
14:00:21 2 some of you in person in the very near future. Take care.

14:00:25 3 MR. GRAVES: Thank you, Judge.

14:00:26 4 MS. CHEN: Thank you, your Honor.

14:00:27 5 MR. GUARAGNA: Thank you, your Honor.

14:00:27 6 (Proceedings concluded.)

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UNITED STATES DISTRICT COURT )

WESTERN DISTRICT OF TEXAS )

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